

MACC

METROPOLITAN AREA
COMMUNICATIONS COMMISSION

ORIGINAL

REPRESENTING THE COMMUNITIES OF BANKS, BEAVERTON, CORNELIUS, DURHAM, FOREST GROVE, GASTON, HILLSBORO, KING CITY, LAKE OSWEGO, NORTH PLAINS, RIVERGROVE, TIGARD, TUALATIN AND WASHINGTON COUNTY

Cable TV Franchise Regulation • Telecommunications Advice and Support • Public Communications Network (PCN)

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December 10, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**Reply Comments of the Metropolitan Area Communications Commission,
Beaverton, Oregon in WT 99-217; CC 96-98, Notice of Inquiry, Promotion of
Competitive Networks in Local Telecommunications Markets.**

Dear Secretary Salas:

Enclosed are ten (10) copies of our reply comments in the above-referenced proceeding.

Very truly yours,

Bruce Crest, Administrator

No. of Copies rec'd 6+10
List ABCDE

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December 10, 1999

Chairman William Kennard
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Reply Comments of Metropolitan Area Communications Commission (MACC),
Beaverton, Oregon, in WT 99-217; CC 96-98 - Notice of Inquiry, Promotion of
Competitive Networks in Local Telecommunications Markets**

Dear Chairman Kennard:

I am responding to the Federal Communications Commission (FCC) Notice of Inquiry (NOI), on behalf of the Oregon cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Tigard, and Tualatin, and Washington County, that, together, form the Metropolitan Area Communications Commission (MACC).

We would strongly oppose any attempt by the Commission to preempt local communities' authority over their public rights of way, or local tax authority, as suggested in the Commission's Notice of Inquiry ("NOI") in this docket. Local governments in Oregon and elsewhere have taken years to obtain, develop/construct, and maintain rights of way within their communities. Local taxpayers entrust their elected and appointed city officials to protect their interests in this public property and to receive just compensation for its use by private interests.

Local Right of Way Management

Right of way is one of the most "local" concepts of property. It cannot be managed at the federal level. Oregon local governments are responsible for the coordination of the use of the rights of way by providers of: telecommunications, cable, electric, natural gas, water, sewer, and other services. They are also responsible to receive fair and reasonable compensation for use of this property, and franchising authority is an inherently appropriate tool. Local governments are responsible for treating all users fairly and to adequately protect the public health and welfare exceed the purview of the FCC, and use of public rights of way by telecommunications providers.

That said, neither local management of the rights of way, nor the costs of compensating local taxpayers for use of local property, has limited telecommunications competition in our area. If there are any problems with deployment of competitive services they appear to be due to the rapid growth, consolidation, and general confusion of a rapidly growing market of providers. These issues, internal to the telecommunications industry, appear to be the greatest barrier, causing delays and problems with financing.

Competitive Telecommunications Services

Any concerns about promotion of competitive markets should, instead, address the serious lack of choice for the residential consumer. According to a report by the Oregon Public Utility Commission ("1998 Local Telecommunications Competition Survey, August 12, 1999"), competitive local exchange carriers (CLECs) were serving only 0.6 percent of residential customers, supplied only 0.6 percent of residential lines, and received only 1.3 percent of the residential revenues." The report further states that "telephone restoration" carriers accounted for about sixty-five percent (65%) of all of the CLEC's residential lines. The report states that CLECs supplied 11.1 percent of business lines. Local right of way management and franchise requirements affect all of the CLECs the same, regardless of whether the provider is serving business or residential customers. It is the telecommunications industry, not local governments that are limiting the availability of competitive networks.

MACC "Model Telecommunications Infrastructure Ordinance"

In their comments on the NOI, AT&T cites, and criticizes, a model ordinance it claims was "adopted by the League of Oregon Cities." This ordinance was never adopted, nor even recommended, by the League.

The ordinance was, however, drafted by the staff and attorney of our Commission, on behalf of our members. Contrary to industry comments on the NOI, the "Model Telecommunications Infrastructure Ordinance" was drafted in order to help provide common processes and clear requirements for cities that are members of our Commission, and other cities in the state. After passage of the Federal Telecommunications Act of 1996, providers told us they didn't know what to expect when they went to a city to negotiate for use of the public rights of way – an ordinance would provide this advance information and explanation. This Ordinance was drafted to help benefit competitive providers, to set up ground-rules, to provide advance discussion of the expectations of local governments. In addition, representatives of local ILECs, CLECs, CAPs, wireless, and other telecommunications providers were invited to read and comment on the ordinance during its development. Their comments and suggestions were incorporated in the final document, reducing its length by nearly a third, and addressing nearly every concern.

In AT&T's comments on the NOI, they state: "A model ordinance adopted by the League of Oregon Cities similarly state that municipalities shall evaluate telecommunications provider's financial, technical, and legal ability when considering franchise renewal applications." This is true, and appropriate. Any franchise issued under Oregon law is a contract, agreed to by both parties. It is not, however, a commodity that can be bought or sold without mutual agreement. This provision is a standard consideration of most cable franchises and of most telecommunications franchises with Oregon cities. This requirement is not inappropriate.

There has been incredible growth in the telecommunications field, and providers are dealing with tens of thousands of local governments nationwide. If any telecommunications provider has a problem with the policies of a particular city, that company is responsible for negotiating the issue with that particular governmental entity. If need be, that provider may use the courts to resolve the issue. Such circumstances have been rare – there have been only a handful of court cases in the three years – and the courts have been handling these issues.

We would hope that the FCC would not misconstrue these isolated circumstances to be the norm of provider-government operations, thereby taking broad actions to preempt local franchising authority.

Zoning

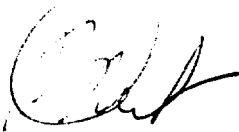
Similarly, zoning laws are matters of local concern, designed to protect and promote the public health, safety and welfare, ensure compatibility of uses, and to preserve property values. Retaining the authority to determine the numbers, types, locations, size, and aesthetics of antennas on buildings (such as requiring them to be properly screened) in order to achieve these legitimate goals, still allows the needed services to be provided. Local governments have to balance these competing concerns, and treat both telecommunications providers and our residents fairly. That is inherent in the daily roles of elected officials.

Conclusion

Finally, MACC's member governments work cooperatively with both incumbent and competitive providers in our communities. We believe that the Telecommunications Act of 1996 preserved local authority over local public rights of way.

The Commission has recognized the importance of vigilant restraint thus far in addressing local property rights and taxation authority. We urge you to resist the temptation to impose new federal regulatory structures and to respect the rights of local communities. We urge you to consider the comments that you receive from local governments across the country, particularly those from the National League of Cities, and from the law firm of Varnum, Riddering, Schmidt, & Howlett.

Sincerely,



Bruce Crest
Administrator

Copies enclosed for:

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Commissioner Michael Powell
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**Commissioner Susan Ness
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**Ms. Magalie Roman Salas, Secretary
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